

DOCKET FILE COPY ORIGINAL

FCC 96-317

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 22 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

)

)

Advanced Television Systems

)

and Their Impact upon the

)

Existing Television Broadcast

)

Service

)

MM Docket No. 87-268

Sixth Further Notice Of Proposed Rule Making

**Comments of the Benton Foundation**

November 22, 1996

No. of Copies rec'd  
List ABCDE

029

Kevin Taglang  
Benton Foundation  
1634 Eye St, NW  
Washington, DC 20006  
benton@benton.org

## Summary

Benton focuses its comments on three interrelated issues: new entry into broadcasting, noncommercial allocations, and Low Power Television stations. Benton finds all three issues to come under one umbrella: diversity of ownership and viewpoint.

The Commission can guarantee that the public interest is served if it addresses the problems of new entry into broadcasting, noncommercial allotments, LPTV stations, and defining public interest obligations.

- The Commission has proposed possible channel sharing in digital broadcasting to lessen the impact on LPTV stations. Benton supports such a plan and believes that existing LPTV stations be given priority. But Benton also proposes that a channel sharing plan be expanded to include new entrants to broadcastings as well.
- Benton proposes that if noncommercial allotments are to be used to aid commercial broadcasters transition to DTV, these broadcasters should adopt some of the public interest obligations that would be fulfilled by noncommercial broadcast outlets. Benton suggests that defining the public interest obligations should occur in a separate rulemaking (outlined below in section V) and the rulemaking should take place before any digital licenses are issued.
- LPTV stations must be part of the DTV picture and issues around possible destruction of stations should be settled before any digital licenses are issued. LPTV's important benefits to American culture should not be ignored. The Commission should adopt an allotment plan that includes LPTV stations and provides for their continued success in the era of digital television.
- Benton calls for a rulemaking dedicated to setting public interest standards for DTV licenses. Benton believes that free, over-the-air broadcast television provides important information services and should be a vital part of the emerging wireless and wired NII. Benton proposes that it is time to address television content: programming diversity, children's television, and free time for political candidates. Benton believes that the public deserves a better return on its spectrum investment with broadcasters.

## **Table of Contents**

I.	Introduction: Digital Television and Programming/Ownership Diversity . . . . .	1
II.	The Commission Should Consider Channel Sharing Plan to Promote New Entry into Broadcasting . . . . .	5
III.	Use of Existing Vacant Noncommercial Allotments for Commercial Purposes Should Obligate Commercial Licensees to Increased Public Interest Obligations . . . . .	6
IV.	Low Power Television Stations Must be Protected Before the Commission Issues any Digital Licenses . . . . .	6
V.	The Commission Should Initiate a Rulemaking on the Public Interest Obligations of Broadcasters Before Issuing Any Digital Licenses . . . . .	7

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Advanced Television Systems  
and Their Impact upon the  
Existing Television Broadcast  
Service

)  
)  
)  
)  
)  
)

MM Docket No. 87-268

**Sixth Further Notice Of Proposed Rule Making**

**I. Introduction: Digital Television and Programming/Ownership Diversity**

**A) The Sixth Further Notice Of Proposed Rule Making**

The Commission seeks comment on policies for developing the initial digital television ("DTV") allotments, procedures for assigning DTV frequencies, and plans for spectrum recovery.<sup>1</sup> The Commission further points out that the "overarching goals in this phase of the proceeding are to ensure that the spectrum is used efficiently and effectively through reliance on market forces and to ensure that the introduction of digital TV fully serves the public interest."<sup>2</sup>

In the Fourth Further Notice in this proceeding, the Commission asked for comments on the Commission's longstanding policy of fostering programming and ownership diversity, and what measures should be adopted to include new entrants in the emerging era of digital television broadcasting. The Commission again invites comment on how the adoption of its proposals will affect new entry into broadcasting.

The Commission recognizes the special consideration noncommercial allotments deserves and is asking for comments on how to treat these allotments. There are currently 600 vacant NTSC allotments, 338 of which are noncommercial. This means that there are 600 potential TV stations that are not operating because there is no one licensed to do so and no one has applied to use that spectrum for TV broadcasting. In some areas, it would not be possible to accommodate all of the

---

<sup>1</sup> Sixth Further Notice Of Proposed Rule Making ("NPRM") at ¶ 1.

<sup>2</sup> NPRM at ¶ 3.

existing broadcasters with a new DTV channel unless the unused NTSC allotments in the area are deleted. In others, the presence of unused NTSC allotments would result in crowding that would reduce the expected service areas of the DTV allotments. If vacant allotments are retained, less spectrum would be available for recovery for other uses. The Commission is proposing to eliminate all vacant NTSC allotments.

The present allocation scheme at the Commission will take away spectrum licenses from many small Low Power Television (LPTV) broadcasters. LPTV stations serve small geographic areas across the country. Nearly 90 percent of the minority-owned broadcast television stations are LPTV. They provide programming for diverse ethnic communities in Spanish, Korean, and many other languages. The Commission asserts that the benefits and innovations to be derived from the transition to digital television outweigh the impact on LPTV. The Commission requests comments on how to lessen the impact of the transition on LPTV stations. The FCC also seeks comment on whether, once DTV channels have been allotted to full-service television broadcasters, should licensed LPTV stations be afforded a window of opportunity to seek "primary" use of DTV channels – that is, ahead of new broadcast entrants.

#### B) The Benton Foundation

The Benton Foundation ("Benton") believes that communications in the public interest — including free, over-the-air broadcast television — is essential to a strong democracy. Benton's mission is to realize the social benefits made possible by the public interest use of communications. Benton bridges the worlds of philanthropy, community practice, and public policy. It develops and provides effective information and communication tools and strategies to equip and engage individuals and organizations in the emerging digital communications environment.

Benton's Communications Policy Project is a nonpartisan initiative to strengthen public interest efforts in shaping the emerging National Information Infrastructure (NII). It is Benton's conviction that the vigorous participation of the nonprofit sector in policy debates, regulatory processes and demonstration projects will help realize the public interest potential of the NII. Current emphases of Benton's research include extending universal service in the digital age; the future of public service in the new media environment; the implications of new networking tools for civic participation and public dialogue; the roles of states as laboratories for policy

development; and the ways in which noncommercial applications and services are being developed through new telecommunications and information tools.

In April 1996, Benton began a series of ads on the new digital environment and the public interest. The first ad<sup>3</sup> was an open message to broadcasters which appeared in the *Wall Street Journal* and *Broadcasting and Cable*. Benton called upon broadcasters to use the airwaves to initiate a real debate over the future of television and the medium's potential to serve children better, to use interactive and on-demand features to provide the information people want and need every day, and to facilitate political debate.

Benton also devotes an entire section of our World Wide Web site to the debate over the future of television.<sup>4</sup> Recognizing the effect spectrum allocation played in the passage of the Telecommunications Act of 1996, Benton created this web site to educate the public about what's at stake and to include citizens and noncommercial interests in the debate. The site links to a number of diverse views on spectrum allocation for the transition to digital television and opinions on the public interest obligations broadcasters owe to their communities including children's educational television, community orientated programming, and free time for candidates.

Benton focuses its comments in this proceeding on three interrelated issues: new entry into broadcasting, noncommercial allocations, and Low Power Television stations. Benton finds all three issues to come under one umbrella: diversity of ownership and viewpoint.

Americans spend an average of many hours viewing television each day. Television has become the primary conduit of our national culture in the 20th century. More and more, what is on TV defines what our culture is.

In its cultural role, television should be programmed mindful that viewers are complete human beings – citizens in a democracy, parents, artists – not just consumers. Citizens need competent investigative journalism to provide relevant information in deciding public policy. Parents need quality programming for children and families that acts as a springboard for discussions of shared

---

<sup>3</sup> See Appendix I.

<sup>4</sup> See URL <http://www.benton.org/TV/debate.html>.

values and interests. As artists, viewers need to know that television programming reflects the communities they work so hard to build and keep together. To truly serve the public interest, television must engage economic development and poverty as well as commerce; the arts and humanities as well as entertainment; education in all its forms; and citizen participation and the rebuilding of civic culture.

Recent policy decisions are moving television away from its public interest obligation. The Telecommunications Act of 1996 allows for greater concentration of broadcast ownership – leading to less diversity of voices. The limit on the number of stations broadcasters can own has been eliminated. Broadcast owners are now only restricted by a national audience cap of 35%. The Commission is examining common ownership of more than one local TV station<sup>5</sup>. The rule barring common control of local television and radio stations is to be waived for the top 50 markets.<sup>6</sup> The statute barring common ownership of TV stations and local cable systems has been repealed.<sup>7</sup> The four existing networks (ABC, CBS, NBC and Fox) are barred from merging with each other or with one of the two emerging networks (WB or UPN), but they may start new affiliated networks. With digital television technology, broadcasters will be able to broadcast four or more broadcast "channels" simultaneously. In the not-to-distant future, it is not unreasonable to foresee dominant broadcasters controlling one or possibly two stations or networks in most major markets broadcasting 6 to 12 channels simultaneously. Far from encouraging programming diversity, these decisions seem only to multiply the existing voices.

The Commission can still guarantee that the public interest is served if it addresses the problems of new entry into broadcasting, noncommercial allotments, LPTV stations, and defining public interest obligations.

---

<sup>5</sup> Although not contained within the language of the Act, the Senate and House conferees state their intention that local VHF-VHF combinations be permitted only in compelling circumstances.

<sup>6</sup> The conferees state their expectation that in considering waivers for smaller markets the Commission take into account increased competition and the need to preserve diversity.

<sup>7</sup> The FCC is allowed, but not required, to modify or repeal its rule in the future.

## **II. The Commission Should Consider Channel Sharing Plan to Promote New Entry into Broadcasting**

Benton recognizes and supports the longstanding national policy to encourage viewpoint diversity, and the commitment to diversity of ownership of media outlets as a key tool with which to pursue that goal (*Metro Broadcasting, Inc. v. Federal Communications Commission* 497 US 547, 1990). The Congress, the Commission, and the Courts have long worked to balance the needs for diversity versus the constraints of spectrum scarcity. The gains promised in this proceeding – better picture and sound quality – do not rise to the same policy priority.

In the Fourth Further Notice in this proceeding, Benton filed comments in support of the comparative hearing process: "Under the mandate of *Ashbacker Radio Corp. v. FCC*, 326 U.S. (1945), the Commission should ensure that there is fair opportunity for all qualified parties to obtain use of spectrum during the creation of the Advanced Television System." Passage of the Telecommunications Act of 1996 may supersede *Ashbacker Radio*,<sup>8</sup> but there is no language that should change the Commission's commitment to diversity of ownership and viewpoint.

The Commission has proposed possible channel sharing in digital broadcasting to lessen the impact on LPTV stations. Benton supports such a plan and believes that existing LPTV stations should get priority in such a plan. But Benton also proposes that a channel sharing plan be expanded for facilitating new entry to broadcastings as well. After the initial allocation problems – including the possible darkening of many LPTV stations – have been addressed, the Commission should turn its attention to new entry. When channels become available in the future, the Commission could seek a number of broadcasters – all new to broadcasting – to share the channel. If the capacity of the channel is four simultaneous SDTV programs, the Commission could license four new broadcasters. The Commission could investigate ways of incubating new broadcasters with a channel sharing plan as well. The Commission could reserve some full allocations for "graduates" of shared channels when audience levels and experience match the capacity of a full station.

---

<sup>8</sup> See section 336(a)(1).



### **III. Use of Existing Vacant Noncommercial Allotments for Commercial Purposes Should Obligate Commercial Licensees to Increased Public Interest Obligations**

Benton stresses its deep support for noncommercial, public service media outlets. Public broadcasting plays a crucial role in lifelong learning in the information age. Like the public library, public broadcasting is available to all Americans regardless of ability to pay, it is based in and responsive to the cities and towns that make up the fabric of this country, and, in countless ways, it helps users better understand and appreciate the world around them. Any reallocation of vacant, noncommercial allotments should be used to either protect the substantial federal, state and local investment in the Public Broadcasting System<sup>9</sup> or to promote the goals of public broadcasting: programming that contributes to the common good and addresses needs unmet by the commercial marketplace.

Benton proposes that if noncommercial allotments are to be used to aid commercial broadcasters transition to DTV, these broadcasters should adopt some of the public interest obligations that would be fulfilled by noncommercial broadcast outlets. Benton suggests that defining the public interest obligations should occur in a separate rulemaking (outlined below in section V) and the rulemaking should take place before any digital licenses are issued.

### **IV. Low Power Television Stations Must be Protected Before the Commission Issues any Digital Licenses**

Benton recognizes the importance of LPTV stations. They serve communities that are often ignored by full-service television broadcast stations. They also represent the best gains that have been made in minority media ownership. The Commission established the LPTV service as a means of increasing diversity in television programming and station ownership. The Commission intended the service to provide opportunities for first local television outlets in smaller cities and towns, as well as to provide service to unserved audience-communities within the larger cities. In

---

<sup>9</sup> In a time of decreased Federal support for public broadcasting, these stations will be financially strapped when trying to make the costly transition to the digital format.

the Commission's own words, the LPTV service has more than met its expectations.<sup>10</sup> LPTV stations serve communities in all 50 states. These communities range in population from the hundreds to the millions. The hallmarks of the LPTV service are TV "localism" and specialized "niche" programming. Many LPTV stations air local news and public affairs programs and significant amounts of other locally produced programming. LPTV stations serve the needs and interests of many different ethnic communities, often airing programming in foreign languages. Specialized audiences of LPTV stations have included children, the elderly, students, tourists, farmers, and boaters from a wide array of ethnic backgrounds.

The LPTV service also has contributed to increased diversity in broadcast station ownership. LPTV station licensees include schools, colleges, churches, community groups, newspaper publishers and radio and TV broadcasters. The service has provided substantial first-time ownership opportunities for small businesses and members of minority groups. Small businesses also have benefitted from advertising over local LPTV stations because of the more affordable advertising rates and the ability to target advertising to specialized audiences especially those representing different ethnicities.

These important benefits to American culture should not be ignored. The Commission should adopt an allotment plan that includes LPTV stations and provides for their continued success in the era of digital television.

Benton agrees with many of the comments filed by the Community Broadcasters Association. LPTV stations must be part of the DTV picture and issues around possible destruction of stations should be settled before any digital licenses are issued.

#### **V. The Commission Should Initiate a Rulemaking on the Public Interest Obligations of Broadcasters Before Issuing Any Digital Licenses**

Benton calls for a rulemaking dedicated to setting public interest standards for DTV licenses. Benton believes that free, over-the-air broadcast television provides important information services and should be a vital part of the emerging wireless and wired NII. Benton proposes that it is time to address television content: programming diversity, children's television, and free time for

---

<sup>10</sup> See First Report and Order, adopted May 19, 1994, FCC 94-120 (released June 2, 1994) *Review of the Commission's Rules Governing the Low Power Television Service*.

political candidates. Benton believes that the public deserves a better return on its spectrum investment with broadcasters.

As Benton has noted in previous comments in this same docket, programming quality, not picture and sound quality, may be the ultimate litmus test for a public that seems fairly uninterested in HDTV. The question that the Benton Foundation returns to is, What public interest is being served by the transition to DTV? Spectrum is a valuable public asset. As the Commission guides us through this transition, what gains will the American public see in children's educational television, the revitalization of public debate, the control of violence on television, and community access? If the public is to make this gift to broadcasters, what benefits will we see in the communities that broadcasters serve?

The Commission last asked for comment on public interest obligation in the Fourth Further Notice, before passage of the Telecommunications Act of 1996. At that time, Benton and others questioned the legality of issuing licenses without comparative hearings. Although the Telecommunications Act of 1996 gives the Commission authority to make these allocations without comparative hearings, section 336(a)(5) gives the Commission the authority to prescribe other regulations to protect the public interest in the transition to DTV. Benton suggests the Commission seek public comment on those regulations.

The Commission has proposed using noncommercial allocations to aid commercial licensees make the transition to digital television. Use of these noncommercial allocations should obligate commercial broadcasters to increased public interest obligations.

Increased ownership concentration puts responsive, local programming standards at risk. A notice on public interest standards should include a request for comments on how to best preserve local control of broadcast programming.

The Commission has recently issued rules to insure that there is an acceptable quantity of quality, children's programming available in every community. Broadcasters must air 3 hours out of 168 hours of available programming. Will this ratio remain the same when broadcasters can air 672 hours or more of SDTV programming?

During the past election cycle, the Commission addressed the issue of broadcasters providing free time for political candidates. These proceedings and the resulting airtime provided to the Republican and Democratic parties should serve as background for further discussion of revitalizing political debate.

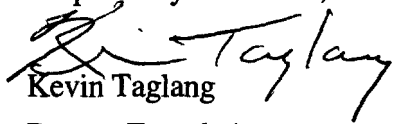
On September 30, 1996, Chairman Hundt delivered "A New Paradigm for Digital Television" to an audience in New York City. In the speech, the Chairman outlined the importance and need for concrete public interest obligations. Benton cannot agree more. The underlying question of Benton, echoed by the Chairman in this speech is "How can we make sure that in a digital age broadcast TV continues to create the public good of a free medium serving the public interest?"

Benton looks forward to sharing proposals with the Commission, broadcasters, and the American public.

---

Respectfully submitted,

November 22, 1996

  
Kevin Taglang  
Benton Foundation

## Appendix I

# An Open Letter to the Nation's Broadcasters

For an industry using the public airwaves—and therefore obligated by law to serve the public interest—the ads you've been running about a "TV tax" are shameful.

## An Open Message to the Nation's Broadcasters

What's really at stake is whether TV will contribute to a better tomorrow for us all—in a way that meets your commercial interests *and* the nation's public interest.

There's no pending TV tax. There's no real threat to free TV. You know it and so do we.

The real issue isn't whether today's popular programs will survive.

The future of digital communications is much bigger than that—and much brighter. Bright enough, in fact, to make telecommunications one of the big engines that powers the American economy.

And also bright enough to do some powerful things for the American people. Like using television to serve children better. Giving us political debate that really is debate. Using the new interactive and on-demand features to provide the information people want and need every day.

You want twice as much of the broadcast spectrum as you have now—for free—and it looks like you're going to get it (at least for now). We think you ought to pay for it—just like every other new entrant does. But at the very least, you need to make the commitment to more expansive—and frankly more creative—ways to make television work harder for the public.

And please. Give the public the real facts. Don't keep using the airwaves to distort the story. Let's have a real debate, with all the options on the table.

That way, we can all together—broadcasters, government leaders, public interest groups, and the American public—define the public interest in the digital age. And where it could take us.

**Defining the Public Interest in the Digital Age.  
We've All Got a Lot at Stake.**



**Benton Foundation**  
1634 Eye Street, NW  
Washington, DC 20006

Through research, policy analysis and links to information and resources, the Benton Foundation engages and equips individuals and organizations to help shape the emerging communications environment in the public interest. For further information: <http://www.Benton.org>.